NOT TO BE INCLUDED
IN BOARD VOLUMES

McKR
Tempe, AZ, Denver, CO,
Oakland and San Diego, CA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PURPLE COMMUNICATIONS, INC. and its Successor and Joint Employer CSDVRS, LLC d/b/a ZVRS	Cases	21-CA-149635
		28-CA-179794
and		21-CA-182016
		32-CA-185337
		21-CA-185343
		27-CA-185377
PACIFIC MEDIA WORKERS GUILD,		27-CA-186448
LOCAL 39521, THE NEWSPAPER GUILD,		28-CA-186509
COMMUNICATIONS WORKERS OF		21-CA-187642
AMERICA, AFL–CIO		28-CA-192041
		27-CA-192084
		28-CA-197009
		27-CA-197062

ORDER DENYING MOTION[1]

The Respondent filed a Motion to Modify the Board's Remedial Order in the Decision and Order reported at 370 NLRB No. 26 (2020).[2] The motion generally asserts that the Board erred in ordering certain remedies and that other remedies are no longer appropriate due to

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. Member Emanuel took no part in the consideration of the Respondent's motion.
[2] The Respondent incorrectly filed its motion pursuant to Sec. 101.12 of the Board's Rules and Regulations, which does not provide for the filing of motions, and Sec. 10518.1 of the Casehandling Manual, which is not binding authority on the Board. As explained more fully below, we treat its motion as a request to reopen the record pursuant to Sec. 102.48(c) and a request for the Board to exercise its authority under Sec. 102.49 to modify the remedial language in the Decision and Order.

factual developments that occurred after the hearing in this case. For the reasons set forth below, we deny the Respondent's motion.

On September 28, 2020, the Board issued a Decision and Order in the above-captioned proceeding, finding, in relevant part, that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally ceasing to pay a wage differential, modifying the parties' collective-bargaining agreement by ceasing union dues deductions for community interpreting work, and unilaterally promulgating rules for the conduct of union stewards during investigatory interviews. Id., slip op. at 2. The Board also adopted the numerous violations of Section 8(a)(5), (3), and (1) to which no party took exception, including the administrative law judge's findings that the Respondent violated Section 8(a)(1) by disparately enforcing its Internet, Intranet, Voicemail and Electronic Communications Policy and non-solicitation policy, maintaining an overly broad confidentiality policy, and labeling employee Disciplinary Action Report forms as confidential. See id., slip op. at 1 fns. 4-5.

To remedy these violations, the Board ordered the Respondent, inter alia, to cease and desist from engaging in the unlawful activity, to rescind or revise the unlawful policies and disciplinary form, to rescind the unlawful changes in employees' terms and conditions of employment and make employees whole for any loss of earnings or other benefits suffered as a result of the changes, and to reimburse the Union for all dues that were not deducted as a result of the Respondent's unlawful cessation of dues deductions. The Board also ordered the Respondent to continue in effect all the terms and conditions of employment contained in the collective-bargaining agreement with the Union covering the unit employees employed at the Respondent's facilities in Denver, Tempe, San Diego, and Oakland, and to notify and, on request, bargain with the Union before implementing any changes in wages, hours, or other terms and conditions of employment of those unit employees. Id., slip op. at 6-10.

The Respondent first argues that the Board erred in ordering it to rescind or revise its Electronic Communications Policy because the Board found the maintenance of the policy lawful, and the judge did not find that it was unlawfully applied. The judge, however, *did* find that the Respondent unlawfully applied its Electronic Communications Policy, stating that "it was applied to restrict the exercise of Section 7 rights." Id., slip op. at 17. Accordingly, the judge stated as a conclusion of law that the Respondent violated Section 8(a)(1) by "[d]isparately applying its Internet, Intranet, Voicemail and Electronic Communication Policy to prohibit non-business emails relating to unionization, while permitting non-business emails that do not relate to unionization." Id., slip op. at 55. As we explained, the Respondent did not take exception to that finding and, under extant precedent, the remedy when an employer violates Section 8(a)(1) by applying a rule to restrict the exercise of Section 7 rights is rescission or revision of the unlawfully applied policy. See id., slip op. at 1 fn. 5.

The Respondent next argues that the Board similarly erred in ordering it to rescind or revise its non-solicitation policy because neither the judge nor the Board made any findings that the policy violated the Act, and the General Counsel withdrew "all complaint allegations" involving the policy. But as with the previous argument, this argument also cannot survive a reading of the record. The policy in question was the Respondent's "non-solicitation and non-distribution of literature" policy. The General Counsel withdrew the allegation that this policy was unlawfully overbroad. See General Counsel's Motion to Withdraw Complaint Allegations (Dec. 19, 2017). The General Counsel did not, however, withdraw the allegations that the Respondent enforced this policy selectively and disparately, i.e., that the non-solicitation and non-distribution of literature policy was unlawfully applied. The judge found that by "disparately *applying* the non-solicitation policy," the Respondent "violated the Act." Id., slip op. at 33 (emphasis added). The judge repeated that finding as a conclusion of law. Id., slip op.

at 55. Here, too, the Respondent did not except to the judge's finding, and the appropriate remedy under extant precedent is rescission or revision of the unlawfully applied policy.

The Respondent also argues that the Board's order and notices are no longer appropriate in light of developments that occurred after the hearing but before the Board issued its Decision and Order. In support of its argument, the Respondent attached several exhibits to its motion. Specifically, the Respondent argues that it should not be required to bargain with the Union or "continue in effect all the terms and conditions of employment contained in the collective-bargaining agreement" with the Union because it closed the four unionized facilities and thus no longer employs the bargaining units at issue in this case.[3] The Respondent also claims that in November 2018, it preemptively paid all monetary relief owed to the Union and unit members based on the violations found by the judge in this case, and in May 2019 it entered into a settlement agreement with the Union in which the parties agreed that the Respondent's bargaining obligations ceased when it closed the last unionized facility. Finally, the Respondent claims it rescinded its Employee Records Policy and removed the word "confidential" from its Disciplinary Action Report forms as the Order requires.

Although the Respondent does not explicitly move to reopen the record to admit evidence of the above events, that is the essence of its argument. The Respondent requests the Board to modify its order and issue revised notices in this case based on purported changed circumstances as evinced in the exhibits attached to its motion. Accordingly, the Respondent's motion in this regard is subject to Section 102.48(c) of the Board's Rules and Regulations, which addresses motions to reopen the record. Section 102.48(c) requires parties to file such motions "promptly

[3] The Respondent claims it closed its facilities in Tempe, San Diego, and Oakland in November 2017 and its facility in Denver in May 2019.

on discovery of the evidence sought to be adduced," and "explain why it was not presented previously, and that, if adduced and credited, it would require a different result."

Here, the Respondent fails to satisfy the requirements of Section 102.48(c) because its motion to reopen the record is untimely. The earliest events described by the Respondent allegedly occurred three years before it filed its motion, and the latest events allegedly occurred over one year before it filed its motion. The Respondent fails to explain why the additional evidence sought to be adduced was not presented previously or promptly upon discovery.[4] Indeed, the Respondent even emphasizes its failure to act promptly, stating that the Board's remedies "require Purple to take actions it completed *long before* the Board issued its Order" (emphasis added). We therefore deny as untimely the Respondent's motion to consider the evidence contained in its motion and the exhibits in support of its arguments, without prejudice to the Respondent's right to raise in compliance proceedings any issues that may impact its remedial obligations under the Order, as appropriate.

IT IS ORDERED that the Motion to Modify the Board's Remedial Order is denied.

Dated, Washington, D.C. February 24, 2021

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] See, e.g., *Labor Ready Inc.*, 330 NLRB 1024, 1024 (2000) (finding untimely a motion that was filed 3 months after discovery of new evidence).